

Internal Revenue Service

Appeals Office
San Jose Appeals, HQ-7100
55 S. Market St.
San Jose, CA 95113

Department of the Treasury**Taxpayer Identification Number:****Person to Contact:****Release Number: 201411042****Release Date: 3/14/2014****Date: December 20, 2013****Tax Period(s) Ended:****UIL:**

501.03-30

Certified Mail

Dear :

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (the "Code"). It is determined that you do not qualify as exempt from Federal income tax under section 501(c)(3) of the Code effective January 1, 20xx.

Our adverse determination was made for the following reason(s):

- You are not operated exclusively for exempt purposes described in section 501(c)(3) of the Code because a substantial part of your activities is social in nature and a substantial part of your assets are used for social purposes that fall outside the purview of section 501(c)(3) of the Code.

Contributions to your organization are not deductible under section 170 of the Code.

You are required to file Federal income tax returns on Forms 1120 for the tax periods stated in the heading of this letter and for all tax years thereafter. File your return with the appropriate Internal Revenue Service Center per the instructions of the return. For further instructions, forms, and information please visit www.irs.gov.

If you were a private foundation as of the effective date of the adverse determination, you are considered to be taxable private foundation until you terminate your private foundation status under section 507 of the Code. In addition to your income tax return, you must also continue to file Form 990-PF by the 15th Day of the fifth month after the end of your annual accounting period.

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Code.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: 1) United States Tax Court, 2) the United States Court of Federal Claims, or 3) the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed within 90 days from the date this determination letter was mailed to you. Please contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment. To secure a petition form from the United States Tax Court, write to the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217. See also Publication 892.

You also have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer

Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States Court. The Taxpayer Advocate can however, see that a tax matters that may not have been resolved through normal channels get prompt and proper handling. If you want Taxpayer Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. You may call toll-free, 1-877-777-4778, for the Taxpayer Advocate or visit www.irs.gov/advocate for more information.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely Yours,

Acting Appeals Team Manager

Enclosure: Publication 892



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities Division
2525 Capitol Street #217
Fresno, CA 93721-2227

Date: **AUG 21 2012**

Taxpayer Identification Number:

Form:

Tax year(s) ended:

Person to contact / ID number:

Contact numbers:

Manager's name / ID number:

Manager's contact number:

Response due date:

ORG
ADDRESS

Certified Mail - Return Receipt Requested

Dear :

Why you are receiving this letter

We propose to revoke your status as an organization described in section 501(c)(3) of the Internal Revenue Code (Code). Enclosed is our report of examination explaining the proposed action.

What you need to do if you agree

If you agree with our proposal, please sign the enclosed Form 6018, *Consent to Proposed Action – Section 7428*, and return it to the contact person at the address listed above (unless you have already provided us a signed Form 6018). We'll issue a final revocation letter determining that you aren't an organization described in section 501(c)(3).

After we issue the final revocation letter, we'll announce that your organization is no longer eligible for contributions deductible under section 170 of the Code.

If we don't hear from you

If you don't respond to this proposal within 30 calendar days from the date of this letter, we'll issue a final revocation letter. Failing to respond to this proposal will adversely impact your legal standing to seek a declaratory judgment because you failed to exhaust your administrative remedies.

Effect of revocation status

If you receive a final revocation letter, you'll be required to file federal income tax returns for the tax year(s) shown above as well as for subsequent tax years.

What you need to do if you disagree with the proposed revocation

If you disagree with our proposed revocation, you may request a meeting or telephone conference with the supervisor of the IRS contact identified in the heading of this letter. You also may file a protest with the

IRS Appeals office by submitting a written request to the contact person at the address listed above within 30 calendar days from the date of this letter. The Appeals office is independent of the Exempt Organizations division and resolves most disputes informally.

For your protest to be valid, it must contain certain specific information including a statement of the facts, the applicable law, and arguments in support of your position. For specific information needed for a valid protest, please refer to page one of the enclosed Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*, and page six of the enclosed Publication 3498, *The Examination Process*. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process. Please note that Fast Track Mediation referred to in Publication 3498 generally doesn't apply after we issue this letter.

You also may request that we refer this matter for technical advice as explained in Publication 892. Please contact the individual identified on the first page of this letter if you are considering requesting technical advice. If we issue a determination letter to you based on a technical advice memorandum issued by the Exempt Organizations Rulings and Agreements office, no further IRS administrative appeal will be available to you.

Contacting the Taxpayer Advocate Office is a taxpayer right

You have the right to contact the office of the Taxpayer Advocate. Their assistance isn't a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate can't reverse a legally correct tax determination or extend the time you have (fixed by law) to file a petition in a United States court. They can, however, see that a tax matter that hasn't been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate assistance. If you prefer, you may contact your local Taxpayer Advocate at:

Internal Revenue Service
Office of the Taxpayer Advocate

For additional information

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Nanette M. Downing
Director, EO Examinations

Enclosures:
Report of Examination
Form 6018
Publication 892
Publication 3498

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer: ORG		Year/Period Ended: December 31, 20XX

LEGEND

ORG - Organization name XX - Date City - city State - state
 Event - event Country - country Motto - motto President - president
 Secretary - secretary Treasurer - treasurer CO-1 & CO-2 - 1st & 2nd
 COMPANIES

Issues:

Does the ORG continue to qualify for exemption under Internal Revenue Code section 501(c)(3)?

Facts:

The ORG (Association) incorporated on April 18, 20XX. The Articles of Incorporation show President as the Association's initial agent. The Association submitted Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, to the IRS on February 10, 20XX. Form 1023 shows President as the Association's President.

The Articles of Incorporation state that the Association's specific purpose is to participate in charitable causes, to raise funds for support of the Motto Community of State, education and to promote friendship and Motto culture.

Part IV of Form 1023 instructs the applicant to prepare an attachment and provide a narrative description of the applicant's past, present, and planned activities. An attachment was not found in the Determination File.

In subsequent correspondence with the IRS, the Association provided a letter, dated April 25, 20XX, with a narrative description of the Association's past, present, and future activities. The letter stated the Association's past activities consisted of a food fair to raise funds. The present activities consisted of publishing a weekly newspaper, organizing a membership drive, and raising funds for a scholarship program. The Association provided six future activities and a corresponding percentage of time the Association would devote to each activity:

- | | |
|----------------------------------|-----|
| 1. Provide Scholarships | 20% |
| 2. Disaster Relief | 15% |
| 3. Provide Surviving Benefits | 15% |
| 4. Publish a Motto Newspaper | 20% |
| 5. Provide Assistance in Country | 15% |
| 6. Medical Donations | 15% |

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The granting of scholarships was to begin as soon as funds were raised. The Association provided a selection process and the grants were going to be awarded to deserving and needy applicants.

The disaster relief was to consist of providing financial help to natural disaster victims in the United States or the Far East, including Country. The Association was to raise funds following a natural disaster. The Association would provide the funds to the CO-1 for domestic disasters. In the event that a natural disaster struck Country, the Association's Board of directors would arrange to make trips, at their own expense, and personally provide the assistance to the victims.

The surviving benefits were to consist of providing comfort and a token amount of financial support to member's families should a hospitalization or death in the family occur. A selected board member would visit a hospitalized member and give words of encouragement. In the event of the member's death the Association would provide \$300 to the family.

The newspaper publishing was to consist of publishing a weekly Motto newspaper intended for the Motto community. The newspaper would be in the Motto language and would provide local, international, and Motto news. The newspaper would be circulated in the City State area, City, City, City, City, and City.

The assistance in Country would consist of organizing donations of books, school supplies, and multivitamins for needy school children in Country. The efforts would begin as soon as possible and the Board members were to travel to Country, at their own expense, and deliver the donations to Country personally.

The medical donations would consist of soliciting donations of pre owned medical equipment. The Association would prepare a list of needy hospitals located in Country. The Association would consider the need, population, accessibility, feasibility, and cost to create a list of hospitals. The list of hospitals along with their respective needs would be provided to substantial donors, Motto-American doctors, members, families, and the newspaper readers.

In a subsequent letter to the IRS, dated May 17, 20XX, the Association provided more details regarding its Death Benefits Awarding Process, Food Fair, and Newspaper.

The letter provided details of the process the Association would implement to verify that the deceased was a member or related to a member of the Association. The letter stated that a check would be provided to the family, but did not provide an amount.

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
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The timing of the Food Fair coincided with an annual Motto New Year "Event". The Event consists of a water throwing festival, a ceremony honoring approximately 80 senior citizens, and Motto song and dance. The Association would not charge an admission fee.

The letter stated that the Association did not print a newspaper. The letter stated the Association publicized itself in the CO-2, which was partly owned by the Association's President.

In a subsequent letter to the IRS, dated June 8, 20XX, the Association provided details about its Beauty Contest & Fashion Show (Show). The Show is a combined effort by the Association and a local Motto clothing and beauty accessories store (Store). The Association would invite Motto contestants to participate. The Store was to provide Motto attire to the contestants. The Association would not provide prizes to the contestants, but the Store may provide token prizes. A winner would not be declared and the participants were not subject to future commitments to the Store or to the Association.

In a subsequent letter to the IRS, dated July 9, 20XX, the Association stated it would not provide monetary death benefits.

Ultimately the IRS issued a Determination Letter dated July 5, 20XX. The Determination Letter recognized the Association as an organization exempt from Federal income tax as an organization described under Internal Revenue Code (Code) section 501(c)(3) and recognized the Association as a public charity as described in Code Section 107(b)(1)(A)(vi).

In an interview conducted with President, President, and Secretary, Secretary, and Treasurer, Treasurer on May 22, 20XX they stated that the Association's primary exempt purpose was to preserve and celebrate the Motto culture.

The officers stated the Association hosts two annual events; the Motto New Year in April and the Senior Day in October.

The New Year Festival, also known as the Event Water Festival, is structured similar to the festival in Country. According to the officers it is a time to celebrate the New Year by throwing water at each other.

During the Event Water Festival, the Association conducts its Outstanding Students Awards recognition. In 20XX five students were recognized; one student received \$, three students received \$, and one student received \$.

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer: ORG		Year/Period Ended: December 31, 20XX

The Senior Day event honors seniors above the age of 75 of Motto descent. The seniors are honored in a dinner, dance, music, and are awarded donated prizes.

The Association began hosting Motto language classes on Sundays in 20XX. The teachers are volunteers and teach the children the Motto language.

The Income Statement for the year ended December 31, 20XX attached to the Association's 20XX Form 990EZ, *Short Form Return of Organization Exempt From Income Tax*, does not show any contributions earmarked for disaster relief or assistance to Country. The Income Statement does not show any disaster relief or assistance expenses.

An examination of the Association's books and records for the period ending December 31, 20XX showed that the Association received \$ in donations. The examination revealed that \$ in expenses were incurred and paid in the course of hosting the Event Festival, \$ was paid related to student awards, and \$ in expenses were incurred and paid related to hosting Senior Day.

Law:

Code section 501(c)(3) exempts from federal income tax organizations organized and operated exclusively for charitable, educational, and other exempt purposes, provided that no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

Federal Tax Regulations (Regulations) section 1.501(c)(3)-1(a) states in part that in order to be exempt as an organization described in Code section 501(c)(3), the organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt. The term "exempt purpose or purposes", as used in this section, means any purpose or purposes specified in section 501(c)(3).

Regulations section 1.501(c)(3)-1(b)(4) states in part that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized. However, an organization

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does not meet the organizational test if its articles or the law of the State in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders.

Regulations section 1.501(c)(3)-1(c)(1) provides that an organization will not be regarded as operated exclusively for exempt purposes if more than an insubstantial part of its activities is not in furtherance of exempt purposes.

Regulations section 1.501(c)(3)-1(d)(3) defines the term *educational* as the instruction or training of the individual for the purpose of improving or developing his capabilities; or the instruction of the public on subjects useful to the individual and beneficial to the community. Examples of educational organizations are primary or secondary school, a college, or a professional or trade school, which has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on.

In *Spanish American Cultural Association of Bergenfield v. Commissioner*, T.C.Memo.1994-510, 1994 WL555882, the U.S. Tax Court held that the Spanish American Cultural Association of Bergenfield did not qualify as an organization described in Code section 501(C)(3) because its charitable activities were insubstantial compared to its social activities.

Taxpayer's Position:

The Taxpayer conceded that the Association did not have a charitable activity since 20XX when the Association raised funds to help the victims of Cyclone that struck Country in May of 20XX. However, they did not provide a definitive position regarding the proposed revocation.

The Taxpayer stated that Senior Day has a charitable quality because it provides senior citizens an opportunity to be recognized, a meal, and some gifts.

The Taxpayer stated that it began to provide Motto language classes to children in 20XX. The language classes are educational in nature because they teach the Motto language to children.

Government's Position:

The Association does not continue to qualify for exemption under Code section 501(c)(3) because it did not demonstrate that its charitable activities are substantial in comparison to its social activities. The Taxpayer was afforded an opportunity to provide support to demonstrate that its activities were charitable in subsequent years, but stated that the Association did not carry on any charitable activities in the subsequent years.

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The books and records for the period ending December 31, 20XX showed that the Association dedicated \$ (%) of its expenses to the Event Festival, \$ (%) to Senior Day, and \$ (%) was awarded to students for academic achievements.

The Event Festival is an annual social event and does not have a charitable quality.

The Senior Day may recognize seniors, provide a meal, and some gifts but it does not have a charitable aspect. According to the Taxpayer the event honors seniors of Motto descent with a dinner, dance, music, and gifts. The Association did not demonstrate that a senior of Motto descent is necessarily a charitable class. The annual frequency of the event is indicative of social gathering and not an effort to alleviate the seniors from distress.

The Motto language classes may have an educational aspect because they provide instruction to children to learn a skill, but they are not provided in such a manner to be regarded as educational per the Regulations.

Conclusion:

The Association does not continue to qualify for exemption under Code section 501(c)(3) because it did not demonstrate that its charitable activities are substantial in comparison to its social activities.